



March 1, 2001

Ms. Janice Mullenix  
Associate General Counsel  
Texas Department of Transportation  
125 E. 11<sup>th</sup> Street  
Austin, Texas 78701-2483

OR2001-0763

Dear Ms. Mullenix:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 144568.

The Department of Transportation (the "department") received a request for information related to "Posting Number 0 52 H097 769." You indicate that you will release a portion of the requested information. However, you claim that certain responsive information consists of "test items" and are excepted from disclosure under section 552.122 of the Government Code. We have considered the exception you claim and reviewed the submitted sample information.<sup>1</sup>

Section 552.122(b) excepts from disclosure test items developed by a licensing agency or governmental body. In Open Records Decision No. 626 (1994), this office determined that the term "test item" in section 552.122(b) includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated, but does not encompass evaluations of an employee's overall job performance or suitability. Items may be withheld under section 552.122 if they "measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual," are a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," and they "involve an evaluation of an applicant's knowledge in a particular area." Open Records Decision No. 626 at 6 (1994). Whether information falls within the section 552.122(b) exception must be determined on a case-by-case basis. *Id.* Traditionally, this office has applied

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<sup>1</sup>We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

section 552.122(b) where release of "test items" might compromise the effectiveness of future examinations. *Id.* at 4-5; *see also* Open Records Decision No. 118 (1976). Further, when answers to test questions might reveal the questions themselves, the answer may also be withheld under section 552.122. *Id.* at 8; *see* Attorney General Opinion JM-640 at 3 (1987).

From our review of form 1989-97 Rev. 9/98, titled "Knowledge Skills and Abilities," we conclude that this form does not measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual in a particular area. Rather, this form provides for an evaluation of candidates' overall suitability for a particular position. This form, therefore, may not be withheld under section 552.122 of the Government Code.

From our review of the submitted form titled "Screening Instrument," we conclude that pages 3 and 4 of this form "measure the skill, knowledge, intelligence, capacities, or aptitudes of an individual," are a "standard means by which an individual's or group's knowledge or ability in a particular area is evaluated," and "involve an evaluation of an applicant's knowledge in a particular area." However, the remainder of the submitted pages of this form do not. Pages 3 and 4 of the Screening Instrument form may be withheld under section 552.122 of the Government Code. The remaining pages of the Screening Instrument form must be released to this requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body

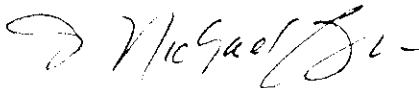
fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael Jay Burns  
Assistant Attorney General  
Open Records Division

MJB/er

Ref: ID# 144568

Encl: Submitted documents

cc: Mr. Robert O'Neill  
13200 Algerita Terrace  
Manchaca, Texas 78652  
(w/o enclosures)